

FTB NOTICE

California Franchise Tax Board - Legal Division



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FTB NOTICE 94-9

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**Subject: Employer Child Care Program / Contribution Credit Salary Reduction Agreements
Statutory Changes made by AB 3144 (Stats 1994, Ch. 748) Legal Ruling 93-1
Superseded and Replaced**

Legal Ruling 93-1, April 23, 1993, held that for purposes of computing the credit allowable under Revenue and Taxation Code § 23617.5, "employer contributions" can include amounts designated by employees in salary reduction agreements and excludable by the employees from gross income, but only to the extent that those amounts are used for qualifying dependent care plans under Revenue and Taxation Code §§ 23617.5 or 17052.18.

Sections 2 and 6 of AB 3144 amend Revenue and Taxation Code §§17052.18(c)(4) and 23617.5 (c)(4) to provide that for taxable and income years beginning on or after January 1, 1995 and before January 1, 1998, "contributions" include [only] direct payments to child care programs or providers. Thereafter, the credit is repealed.

Therefore, for taxable and income years beginning on or after January 1, 1995, amounts designated by employees as salary reduction agreements no longer qualify as "contributions" for purposes of computing the credits where the employer requires the employee to seek reimbursement from the employer (or the plan) after the expenses are incurred. However, amounts paid directly by employers to child care programs or providers continue to qualify for the credit, even where such payments are excluded from the employee's income under a salary reduction agreement which meets the requirements of Internal Revenue Code §129.

Legal Ruling 93-1 (April 23, 1993) is superseded and replaced for taxable and income years beginning on or after January 1, 1995.

DRAFTING INFORMATION

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